

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

UNITED STATES GYPSUM COMPANY
Employer¹

and

Case 22-RC-12176

**INTERNATIONAL CHEMICAL WORKERS
UNION COUNCIL OF THE UNITED
FOOD AND COMMERCIAL WORKERS UNION,
LOCAL 271, AFL-CIO**

Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceedings to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

¹ The name of the Employer appears as amended at hearing.

² The name of the Petitioner appears as amended at hearing.

³ Briefs filed by the Employer and the Petitioner have been considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.⁴
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵
3. The labor organization involved claims to represent certain employees of the Employer.⁶
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within

⁴ By Motion dated March 18, 2002, the Employer seeks to reopen the record and stay any election in this matter based upon its assertion that a previously vacant position (hourly supervisor) has been filled since the close of the hearing. The Employer asserts that this is a supervisory position that should be excluded from the unit on that basis. At the hearing the Employer was precluded from introducing evidence on the then vacant position. The Regional Director sustained this ruling upon the Employer's special permission to appeal. Thereafter, the Board, in an Order dated March 13, 2002, denied the Employer's request for special permission to appeal the Regional Director's Order. In this denial, the Board noted that the Employer could file a UC petition should the vacant position be filled. In view of this, I will not delay this proceeding further and, therefore, the Employer's Motion here is denied.

⁵ The Employer is a Delaware corporation engaged in the manufacture, sale and distribution of construction materials at its Port Reading, New Jersey facility, the only facility involved herein.

⁶ The status of the Petitioner as a labor organization within the meaning of Section 2(5) of the Act will be discussed below.

the meaning of Section 9(b) of the Act for the reasons described below:⁷

All full time and regular part time production and maintenance employees, including service employees, production inventory clerks and quality control employees employed by the Employer at its Port Reading, New Jersey facility, but excluding all office clerical employees, engineering inventory control clerks, service inventory clerks, managers, guards and supervisors as defined in the Act, and all other employees.

I. Issues and Findings:

As noted above, the Employer declined to stipulate as to the labor organization status of the Petitioner. As discussed below, I find that the Petitioner is a labor organization within the meaning of the Act.

Based on the functional integration of the Employer's enterprise, and the resulting community of interest, the Petitioner seeks to represent a unit of production and maintenance employees including service department employees. The Employer counters that the service department employees do not share a community of interest with the production and maintenance employees and, therefore, should be excluded from any proposed unit. In addition, the Employer, contrary to the Petitioner, contends that two clerical positions, engineering inventory clerk and production inventory clerk, should be included in the unit because they are plant clerical positions.

⁷ At hearing the parties stipulated that service inventory clerks, originally sought by Petitioner, should be excluded from the unit. There are approximately 75 employees in the unit.

As described below, I find that the unit sought by the Petitioner including service department employees is appropriate. Further, I find that the production inventory clerk is a plant clerical employee who should be included while the engineering inventory control clerk is an office clerical employee properly excluded from the unit.

II. **Labor Organization Status of Petitioner:**

The Employer declined to stipulate that the Petitioner is a labor organization under the Act. With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). In this regard, the record reveals that employees have participated in the Petitioner. The record also discloses that the Petitioner deals with employers concerning wages, rates of pay, hours and other terms and conditions of employment, has over 400 collective bargaining agreements with various employers. In these circumstances, I find the Petitioner to be labor organization under Section 2(5) of the Act. *Ana Colon, Inc.*, 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, above.

III. **Unit Scope:**

The primary issue here is whether the unit sought by the Petitioner is appropriate for collective bargaining. In making unit determinations, the Board's task

is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In so doing, the Board looks “first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If however, it is inappropriate, the Board will scrutinize the Employer’s proposals.” *Dezcon, Inc.*, 259 NLRB 109, 111 (1989). It is well established that units of production and maintenance employees are appropriate. *Eastern Iron and Metal Co.*, 106 NLRB 1261 (1953); *Geneva Steel Co.*, 57 NLRB 50 (1944); *Electro-Metallurgical Co.*, 54 NLRB 15 (1943); *Sheffield Steel Corp.*, 43 NLRB 956 (1942). The Board has traditionally included in production and maintenance units, quality control employees who have substantial contact with production and maintenance employees and whose duties are an integral part of the overall manufacturing process. *Liberty Glass Division*, 211 NLRB 939 (1974). Similarly, plant clerical employees, who have a community of interest with production and maintenance employees, are generally included in production and maintenance units. *Columbia Cabinet Corp.*, 146 NLRB 1039 (1964); *Ensco Derrick and Equipment Co.*, 72 NLRB 378 (1947).

In determining whether a unit is appropriate, the Board considers whether the employees share a community of interest. The factors the Board reviews in making this decision are well-established and include the training and skills of employees, their hours of work and compensation, the extent of interchange among employees, whether there is common supervision, and the bargaining history, or absence thereof,

at the Employer's facility.⁸ See *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). An application of these factors to the instant case makes clear the Petitioner's requested unit, as modified by inclusion of the production inventory clerk, is an appropriate unit for the purposes of collective bargaining.

This Employer manufactures finishing products for sheet rock, some paint items used for new construction over drywall, and textured finish products. The enterprise consists of both dry and non-dry, ready mix products. The basic ingredients, such as mica, talc and sel-cell are primarily brought in by rail. Finished product that is manufactured at another of the Employer's facilities is also brought in by truck but merely stored at the Port Reading facility. The service department employees are responsible for bringing in and taking out the raw material and finished products. Raw materials are delivered by rail car to a siding that ends in the Employer's yard. Service employees hook piping to the rail cars and blow the product, be it mica, sel-cell, talc, etc., from the rail cars into the appropriate storage tanks. Once the hook up is made, they take a sample of the shipment to the quality control lab for testing. Having been assured that the sample is adequate, they finish the transfer from rail car to storage silo. All storage bins are regularly measured by service employees and the resulting amounts reported to the production department.

Service department employees are also responsible for collecting, transporting and loading the finished product when it comes off the production line. If dry

⁸ There is no history of collective bargaining at this facility. However, a separate Employer, Horo Trucks, which has a presence at the Port Reading facility, employs employees represented by the Teamsters.

products, they collect the bagged products at the end of each production line, load the bags onto pallets, transport the pallets by forklift to trucks and load the trucks.⁹ If ready mix products, the service department employees collect the pails into which it has been poured and sealed and transport it to the shipping area.

Service employees are responsible for making sure that there are adequate bags, pails and pallets at the production lines and that finished product is either transported to a shipping or storage area. Service employees are in and out of the production area repeatedly during each shift. If there is a shortage of any packing material such as bags or pails, production employees merely have to call over a loud speaker system for the service employees to bring additional packaging.

The approximately 45 production employees who work the employer's three shift, 24-hour operation, are responsible for drawing the raw materials from silo or storage areas, done by air blown piping, and taking it through the mixing and production process. The inflow of material for ready mix is controlled by production department computer operators. Once the ingredients have been introduced, a sample is taken by a production employee to the quality control lab for testing. A watt meter can be used to determine what is in the mix if there is a question. Once the ready mix batch has passed quality control, it is pumped into holding tank where a thickening agent is added. All monitoring of the product as it passes through each stage is computerized, whether ready-mix or dry mix. Once the batch of ready mix has been

⁹ Occasionally employees of Horo Trucking may help with loading a truck, but the prime responsibility for materials coming in and going out of the plant rests with the service employees.

thickened, it is ready to be containerized in pails.

The dry mix process is much the same as the ready mix process. Materials are air blown through piping, controlled by computer, although mixer operators may manually weigh some materials. Once all the materials are present, the operator will remove a sample of the mix and leave it for a quality technician to gather for testing. Each batch of dry mix is approximately 3000 pounds and takes 10 minutes to mix. Upon completion, the panel operator opens a valve and lets the mix proceed to the packing station where it is funneled down a chute into a bag. The bag is filled, automatically sealed, removed by the operator and placed on a conveyor belt for flattening and code stamping. Another operator puts it on the palettes. Palettes are then collected by service department employees.

The approximately 30 service department employees rotate assignments. Some are in the loading and unloading area, one is in the adjoining warehouse, owned by Horo Trucking, for the purpose of rewrapping packing materials that have broken open. The Employer's argument for not including the service employees in a unit with production and maintenance employees is that there are eight service department positions that are traditionally physically separate from the production and maintenance employees, and the two groups of employees, production and maintenance and service department employees, have separate skill sets. Record testimony indicates that service department employees rotate assignments throughout their department, thereby mooting the argument concerning physical separateness.¹⁰

¹⁰ This includes the employees serving in the eight positions traditionally separated.

As to the Employer's other assertion, that the employees possess separate skill sets, I find no merit. Neither position, production employee nor service employee, requires any particular level of education beyond literacy. Either job can be learned through hands-on training, in a maximum amount of three months, according to record testimony. While the service employees do operate forklifts, they are schooled and certified by company personnel as part of the training process. Moreover, to accept the Employer's contention that these employees should be separated from the production and maintenance employees, one would have to overlook all the factors that militate for a finding of community of interest. The production and maintenance and service employees enjoy the same pay scale, from \$12 – 16.00 per hour, same health and pension benefits, same vacation and holiday schedule, use the same parking lot, same lunch room, same restrooms and work the same shifts. Moreover, during the third shift, from 11 p.m. to 7:00 a.m., there is no service department supervisor scheduled. Any issues on that shift are handled by the production and maintenance supervisor. Handbooks and work rules are the same for both groups of employees as are most safety rules, although there are some safety rules specific to each department.

Based on the factual totality, noting that the Petitioner seeks to include them in the unit, I find that that the production and maintenance employees and service department employees share a sufficient community of interest to be included in the same unit for the purpose of collective bargaining.

IV. **Clerical Issues:**

Turning now to the issue of the two clerical positions, production inventory clerk and engineering inventory control clerk, I note that the Board customarily excludes office clerical employees from units of production and maintenance employees, while plant clericals are generally included in such units. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127 (1971); *Westinghouse Electric Corp.* 118 NLRB 1043 (1957); *Raytee Co.*, 228 NLRB 646 (1977). The distinction between office clericals and plant clericals, however, is not always a clear one because the disputed employees often appear to share characteristics of both groups in the duties they perform and in their working conditions. A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and the duties performed by other unit employees. *Ives Business Forms, Inc.*, 286, 289 (1982). In making this determination the Board looks at factors such as whether the clericals have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions, and fringe benefits with unit employees. *American Parts System, Inc.*, 254 NLRB 901, 902 (1981). If such factors are present, the clericals are considered to be plant clericals. *Jacob Ash Co.*, 224 NLRB 74, 75 (1976). If, however, the disputed employees have separate and distinct functions from unit employees; are separately supervised; physically separated; have minimal contact with unit employees; and limited transfer or interchange with unit employees, the clericals are found to be office clericals and excluded from the unit. *Ives Business Forms, Inc.*, above.

Based on the standard denoted above, I find that the production inventory clerk [PIC] shares a community of interest with the petitioned for employees and should properly be included in the unit. The PIC is an hourly employee who regularly interacts with employees on the production floor, doing an inventory of raw materials, including trial materials, and informing quality control when tests will be run. He enters both raw material and production numbers into the computer and generates reports based on those materials. He may substitute materials when necessary, always checking with the production manager, based on what is available. He requires no specialized training to perform his job but is generally a person who comes from the production floor. He parks in the same parking area, uses the same rest rooms, the same break room, and shares the same benefit package and is subject to the same handbook, safety rules and supervision as the rest of the production employees. Moreover, the paperwork he generates is integral to the production process. For the foregoing reasons, I find the plant inventory clerk shares a community of interest with the petitioned for unit and should be included therein.

Conversely, I find the engineering inventory control clerk does not share a community of interest with the petitioned for unit and should be excluded. He is a salaried employee who works from 8:00 a.m. to 4:30 p.m. He is allowed an hour for lunch, which he generally eats in the engineering office, although unlike the petitioned for employees, he is allowed to leave the Employer's premises for lunch. He uses the front, management parking lot and entrance and uses the office restrooms. He reports to the Plant Engineer and although he does have some contact with the maintenance employees, for whom he orders work materials, he is tangential to and,

not an integral part of, the production process. Based on his different method of compensation, his different amenities, minimal contact with and the production and maintenance and service employees, I find that the engineering inventory control clerk lacks a community of interest with the petitioned for employees, and therefore, should be excluded from the unit.

Given that Petitioner has indicated it will go to an election is whatever unit is found appropriate by the Region, I shall issue the following:

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced

more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Chemical Workers Union Council of the United Food and Commercial Workers Union, Local 271, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed within seven (7) days of the date of this Decision, two (2) copies of the election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the employer with undersigned, who shall make the lists available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received in the NLRB Region 22, 20 Washington Place, Newark, New Jersey 07102, on or before March 29, 2002. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N. W., Washington,

D.C. 20570-0001. This request must be received by the Board in Washington by April 5, 2002.

Signed at Newark, New Jersey this 22nd day of March, 2002.

J. Michael Lightner, Acting Regional Director
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